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Patent and Trademark Office

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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/867,819 04/13/92 HARLEY

EXAMINER

CAPUTA, A

18N1/0809

PATREA L. PABST, ESQ.
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1100 PEACHTREE ST., STE. 2800
ATLANTA, GA 30309-4530

ART UNIT	PAPER NUMBER
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1813

DATE MAILED:

08/09/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

subject to restriction/election requirement
☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 0 month(s), 30 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-20 are pending in the application.
Of the above, claims 12-16 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☐ Claims _____ are rejected.
5. ☐ Claims _____ are objected to.
6. ☒ Claims 1-11 and 17-20 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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Election/Restriction

Applicant's election of Group I, Claims 1-11 in Paper No. 8 is acknowledged. Upon further reconsideration by the Examiner
5 Groups I and III (claims 1-11 and 17-20) are considered a single invention.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse
10 (M.P.E.P. § 818.03(a)).

Claims 1 and 17 are generic to a plurality of patentably distinct species comprising:

La/SSB

- 15
1. 17, ICHQ... ; 24, YFGDFNLP
 2. 46, WVPLE... ; 47, VPLEIMIK...
 3. 56, NRL...VIVE; 56, NRLNRLTT; 63, TDFNVIVE; 64, DFNVIVEA
 4. 86, KKTKIRR...; 89, KIRR...

20

 5. 104, YKNDVKNRS...; 112, SVYIK...
 6. 136, QVL...; 139, NIQ...; 144, RTL....
 7. 154, IFVV...; 155, FVVF....
 8. 176, KETDLLIL...; 182, ILFKDD
 9. 200, KVEAKL...; 202, EAKL...

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10. 232, CLLK....
11. 246, RED...
12. 257, GEIK...; 260, KWID....; 262, IDF....
13. 270, EGIILFKEKAK; 270, EGIILFKE
14. 292, GNLQ...; 296, LRNKEV...
15. 325, SLN...; 330, KSK....
16. 354, KVQ...; 360, KKTK....
17. 379, TGP....

Ro/SSA

- 10 18. 30, MNR...; 37, LCF...; 38, CFG...; 44, SEGG...;
45, EGG...; 47, GTY...; 47, GTYYI
19. 76, EIKS...; 78, KSF...; 81, SQE...; 84, GRT...
20. 105, STK...; 106, IST...; 109, KQA...; 111, AFKA
21. 126, FTF...; 130, QFKK...; 138, SMK...; 139,
15 MKC...; 142, GMW...; 145, GRAL...
22. 165, ALA...; 169, TKY...; 173, ORN...; 182,
LLR...; 184, RLS....
23. 198, TKY...; 201, ITK...
24. 210, HEL...; 212, LYK...; 215, KAL...; 221,
20 TEK...; 224, KLL...; 229, LEA...; 234, KVK...
25. 257, HLL...; 263, LKS...; 264, KSK...; 265, SKE...
26. 280, ALL...; 283, RNL...; 285, LGK...
27. 308, LCN...; 313, LLK...; 315, KKA...
28. 330, TYK...; 331, YKT...

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29. 352, ALD...; 355, AAF...; 362, ASM...; 365,
EPT....

30. 398, AMC...

31. 414, YKT...; 420, VPC...

5 32. 433, VLM...

33. 445, TDC...; 449, LPM....; 453, TFA....

34. 472, TFA...PAI,; 472, TFAGGVHP

35. 482, IAL...; 484, REY....

Sm B/B'

10 36. 20, IGT...; 21, GTF...; 22, TFK...; 29, GTF...;
30, TFK...; 44, DCD...; 45, CDEFKIK; 45,
CDEFKIK...; 46, DEF...; 47, EFR...

37. 76, FRK...; 77, RKI...; 78, KIK...; 79, IKP...;
80, KPK...; 81, PKN...; 83, EGP...; 88, KDT...;
15 94, RVP...; 101, AGG...; 104, PGV...

38. 120, IPQ...; 125, AGL...; 131, VRG...

39. 139, QQV...; 140, QVM...; 141, VMT...; 142,
MTP...; 143, TPQ...; 144, PQG...; 144, POGR; 145,
QGR...

20 40. 164, APT...; 165, PTQ...; 166, TQY...; 167,
QYP...; 168, YPP...; 169, PPG...; 170, PGR...;
171, GRG...; 172, RGT...; 173, GTP...; 174,
TPP...; 175, PPP...

41. 184, PPP...; 188, IMA...; 189, MAPPPGMR...; 189,
25 MAPPGMR; 191, PPPGMR; 190, APP...; 191, PPPGMR...;

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192, PPG...

42. 202, FIG...; 206, PPA...; 212, FIG...; 213,
IGM...; 214, GMP...; 216, PPPGMB; 215, MPP...;
216, PPPGMR...; 217, PPG...; 220, MRP...; 221,
5 RPP...; 223, PPPGIR, 222, PPP...; 223, PPPGIR...;
224, PPG...; 228, RGPPPPGM; 228, RGPPPPGM...; 229,
GPP...; 230, PPP...; 231, PPPGMRPP; 231, PPPGMR;
232, PPG...

10 The species (e.g. peptides) are distinct because they are of
different proteins and/or different protein coding regions, which
differ from the other in amino acid composition. The peptides
appear to be immunologically and antigenically distinct, as well.

15 Applicant is required under 35 U.S.C. § 121 to elect a single
species, even though this requirement is traversed.

20 Should applicant traverse on the ground that the species are
not patentably distinct, applicant should submit evidence or
identify such evidence now of record showing the species to be
obvious variants or clearly admit on the record that this is the
case. In either instance, if the examiner finds one of the
inventions unpatentable over the prior art, the evidence or
admission may be used in a rejection under 35 U.S.C. § 103 of the
other invention.

25

A telephone call was made to Ms. Patrea L. Pabst on July 19, 1993
to request an oral election to the above restriction requirement,
but did not result in an election being made.

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Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

5

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Anthony C. Caputa whose telephone number is (703) 308-3995.

10

Anthony C. Caputa, Ph.D.
August 4, 1993



MARGARET PARR
SUPERVISOR PATENT EXAMINER
GROUP 1800